

C1

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N. W.
Washington, D C 20536

File: EAC 01 084 50955

Office: VERMONT SERVICE CENTER

Date: Sep 15 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

PUBLIC COPY


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to employ him as a "Church Minister."

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been performing full-time work as a minister for the two-year period immediately preceding the filing of the petition, that the beneficiary qualifies as a minister, and that a qualifying job offer has been tendered.

On appeal, counsel argues that the petitioner has presented evidence to prove eligibility for the visa.

The first issue that will be addressed in this proceeding is whether the petitioner has established that it has tendered a qualifying job offer.

Regulations at 8 C.F.R. § 204.5(m)(4) state, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In a letter dated October 23, 2001, the petitioner's pastor, in detail, describes the duties that the petitioning organization would like the beneficiary to perform; however, the letter does not state the title of the offered position, or identify the terms of remuneration, if any. It is noted that the petitioner's pastor repeatedly refers to the beneficiary as "Minister Richard Tiras," but fails to cite the title of the position offered. The fact that the petitioner's letter has excluded two major components (job title and remuneration) that could possibly establish sufficient evidence of a qualifying job offer, it can only be found that insufficient evidence has been submitted to establish that a qualifying job offer has been tendered in this case. Consequently, the petitioner has not overcome this portion of the director's objections, and the petition may not be approved.

The remaining issues to be addressed in this proceeding are whether the petitioner has established that the beneficiary qualifies as a minister, and whether the beneficiary had been continuously carrying on the work of a minister for at least the two years preceding the filing of the petition.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(c) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States.

- (ii) seeks to enter the United States—

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Regulations at 8 C.F.R. 204.5(m)(1) state, in pertinent part, that:

An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

Regulations at 8 C.F.R. 204.5(m)(3) state, in pertinent part, that

each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

Regulations at 8 C.F.R. 204.5(m)(2) state, in pertinent part, that:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The record indicates that the beneficiary last entered the United States on September 8, 1996, as an F-1 student. The record contains a copy of Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status - For Academic and Language Students, in which it is indicated that the beneficiary had been accepted to Morgan State University in Baltimore, Maryland for a full course of study in economics. The Form I-20 also indicated that the beneficiary's normal length of study was for five years, from January 17, 1997 through December 31, 2002. The beneficiary was awarded a Degree of Master of Science from Morgan State University on May 20, 2001.

In a letter dated October 23, 2001, the petitioner's pastor stated that prior to the filing of the petition, "Minister Richard Tiras had been an active member" since 1996. The letter indicates that the beneficiary has more than "two years continuous experience as a Christian Church Minister" and that prior to January 17, 2001, the beneficiary's duties were to minister to the covenant family groups in their homes and in church, supervise various ministries, and be secretary to the board of trustees. The letter further indicates that the beneficiary was trained as a "minister" by the

petitioner's pastor. The record contains a Certificate of Completion issued to the beneficiary by the petitioning organization on October 7, 1998, certifying that the beneficiary has successfully completed two years of "Church Ministerial Training and is hereby authorized to perform the duties of Church Minister." It is noted that the record does not state what the two years of "Church Ministerial Training" entailed.

The record contains the petitioner's Leadership Chart, which lists the beneficiary as a deacon who is in charge of the ministries' financial operations. The petitioner provided an outline of the role of deacons and elders in its denomination, which indicates that the role of deacon is to "share the load of church along with God's specially ordained leaders." The role of deacon is also described as assisting the pastors "by administering the temporal and material affairs of the church." Temporal and material affairs are described as:

a. Temporal/Material - that which pertains to this world; worldly; not spiritual; civil or secular rather than ecclesiastical.

- General up keep of the physical structure of the church. Eg.(sic) Cleaning of building; providing care for heating/cooling systems.

- Preparing communion

b. Rendering practical assistance to members

- The first deacons were to distribute food to widows

It appears that the petitioning organization is unable to decide if the beneficiary is a minister or a deacon. Nevertheless, the record by no means demonstrates that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition, or that the beneficiary qualifies as a minister.

The church's certificate showing that the beneficiary is authorized to perform the duties of a "Church Minister," is not adequate in demonstrating the beneficiary's qualifications as a minister for the purposes of this proceeding. Further, the petitioner has given no explanation as to what a "Church Minister" is in the eyes of its denomination. The evidence of record leads the Bureau to believe that the role of "Church Minister" and that of a deacon are one and the same in the petitioning organization.

Despite the record containing a Certificate of Membership issued to the beneficiary by the petitioning organization, which certifies that the beneficiary "has been accepted as a full member of Bethel

World Outreach Ministries, Baltimore church" covering the period from "Nov. 2, 1997 Renewed: 1999," and a Certificate of Installation dated April 29, 2001, certifying that the beneficiary "having been found to be on 'of good report, full of the Spirit and of wisdom,' and capable of using the office well, is hereby set apart publicly to the office and work of Deacon of Bethel World Outreach Church - Baltimore," the record is void of evidence to demonstrate that the beneficiary was actually ordained as a minister.

The record contains no documentary evidence to demonstrate that the beneficiary has received any religious training or education that would entitle him to perform the duties of a minister. The beneficiary's educational background is in the field of economics. The record fails to demonstrate that during the qualifying two-year period the beneficiary received any wages from the petitioning organization in return for the performance of any religious work. As the beneficiary has a wife and three children, it can only be assumed that he earned a living in a secular manner. The Bureau does not question the fact that the beneficiary may have performed some of the described duties for the petitioning organization, but was doing so strictly on a voluntary basis.

Again, the evidence of record fails to demonstrate that the beneficiary had been continuously and solely working as a minister during the two-year qualifying period, or that he was qualified to perform in such a capacity. For this additional reason, the petition may not be approved.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee* 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.